

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

## DARIUS MOSS,

**Defendant.**

**CASE NO. 8:95CR170**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's notice of appeal (Filing No. 253) and the Clerk's memorandum regarding the untimeliness of the notice (Filing No. 254).

On April 23, 2009, the Court denied the Defendant's petition for a writ of audita querela under the All Writs Act, 28 U.S.C. § 1651 (Filing No. 252). On June 22, 2009, the Defendant filed his notice of appeal. (Filing No. 253.)

Federal Appellate Rule of Procedure 4(b)(1)(A) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 10 days of the entry of the judgment or order appealed from. Federal Appellate Rule of Procedure 4(b)(4) provides that the 10-day period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, the notice of appeal is untimely. The Defendant has not shown excusable neglect or good cause.

IT IS ORDERED:

1. The Defendant's notice of appeal (Filing No. 253) is untimely;
2. The Defendant is not allowed leave to appeal in forma pauperis; and
3. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 24<sup>th</sup> day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge